

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

PATRICK E. DUFFY, CLERK

JAMES PILLER,

Petitioner,

VS.

MIKE MAHONEY,

Respondent.

CV-07-16-BU-RFC BY DEPUTY CLERK

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

On January 2, 2008, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation. Magistrate Judge Ostby recommends this Court dismiss the Petition in this matter and deny certificate of appealability.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the January 2, 2008 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Piller appealed two convictions, one entered November 12, 1992, and one entered May 23, 1996. He filed the instant Petition on March 14, 2007. The Petition is clearly untimely and Piller has not shown any extraordinary circumstances that made it impossible for him to file timely. Additionally, the long delay in filing and Piller's failure to respond to the Court's Order indicate that no reasonable jurist would find dismissal debatable. The Petition must be dismissed and a certificate of appealability must be denied.

Accordingly, **IT IS HEREBY ORDERED** Piller's Petition (*Doc. 1*) is **DISMISSED**. A certificate of appealability is **DENIED**.

The Clerk of Court shall notify the parties of the making of this Order.

DATED the 4th day of February, 2008.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE